

HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MELISSA A. SPOONER,

Plaintiff,

vs.

STEVEN M. KIM, D.D.S., P.S., a Washington professional services corporation, and STEVEN M. KIM and JANE DOE KIM, and the marital community comprised thereof,

Defendants.

NO. 2:16-cv-01729-TSZ

**STIPULATED
PROTECTIVE ORDER**

STIPULATION

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery,

1 the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable legal
3 principles, and it does not presumptively entitle parties to file confidential information
4 under seal. The parties to this action (the “Parties”) stipulate that the following Protective
5 Order applies to documents and information produced or disclosed in this case:
6

7 **2. “CONFIDENTIAL” MATERIAL**

8 “Confidential” material shall include the following documents and tangible things
9 produced or otherwise exchanged:

- 10
- 11 (a) Personal health information for any party or third party;
 - 12 (b) Information furnished to the disclosing party in confidence by any third
13 party, which information is not known or freely accessible to the general
14 public;
 - 15 (c) Documents containing or disclosing social security numbers, financial
16 account numbers, access codes, passwords, or similar personal private
17 information or security measures.

18 **3. SCOPE**

19

20 The protections conferred by this agreement cover not only confidential material
21 (as defined above), but also (1) any information copied or extracted from confidential
22 material; (2) all copies, excerpts, summaries, or compilations of confidential material; and
23 (3) any testimony, conversations, or presentations by parties or their counsel that might
24

1 reveal confidential material. However, the protections conferred by this agreement do not
2 cover information that is in the public domain or becomes part of the public domain
3 through trial or otherwise.
4

5 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

6 **4.1 Basic Principles.** A receiving party may use confidential material that is
7 disclosed or produced by another party or by a non-party in connection with this case only
8 for prosecuting, defending, or attempting to settle this litigation. Confidential material
9 may be disclosed only to the categories of persons and under the conditions described in
10 this agreement. Confidential material must be stored and maintained by a receiving party at
11 a location and in a secure manner that ensures that access is limited to the persons
12 authorized under this agreement.
13

14 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
15 otherwise ordered by the Court or permitted in writing by the designating party, a receiving
16 party may disclose any confidential material only to:
17

- 18 (a) the receiving party’s counsel of record in this action, as well as employees
19 of counsel to whom it is reasonably necessary to disclose the information for this litigation;
20
21 (b) the officers, directors, and employees (including in-house counsel) of the
22 receiving party to whom disclosure is reasonably necessary for this litigation, unless the
23 parties agree that a particular document or material produced is for Attorney’s Eyes Only
24 and is so designated;
25
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(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the

1 procedures that must be followed and the standards that will be applied when a party seeks
2 permission from the Court to file material under seal.

3

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
6 party or non-party that designates information or items for protection under this agreement
7 must take care to limit any such designation to specific material that qualifies under the
8 appropriate standards. The designating party must designate for protection only those parts
9 of material, documents, items, or oral or written communications that qualify, so that other
10 portions of the material, documents, items, or communications for which protection is not
11 warranted are not swept unjustifiably within the ambit of this agreement.

12
13 Mass, indiscriminate, or routinized designations are prohibited. Designations that
14 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or delay the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the designating party to sanctions.
17

18
19 If it comes to a designating party's attention that information or items that it
20 designated for protection do not qualify for protection, the designating party must promptly
21 notify all other parties that it is withdrawing the mistaken designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
23 agreement (see, e.g., section 5.2(b) below), or as otherwise stipulated or ordered,
24 disclosure or discovery material that qualifies for protection under this agreement must be
25 clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings): The designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial or trial proceedings: The parties must identify on the record, during the deposition, hearing, or other proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving a deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

(c) Other tangible items: The producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL. If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Any party or non-party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a designating party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
5 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
6 does not waive its right to challenge a confidentiality designation by electing not to mount
7 a challenge promptly after the original designation is disclosed.

9 **6.2 Meet and Confer.** The parties must make every attempt to resolve any dispute
10 regarding confidential designations without Court involvement. Any motion regarding
11 confidential designations or for a protective order must include a certification, in the
12 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet
13 and confer conference with other affected parties in an effort to resolve the dispute without
14 Court action. The certification must list the date, manner, and participants to the
15 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
16 conference.

19 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without Court
20 intervention, the designating party may file and serve a motion to retain confidentiality
21 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).
22 The burden of persuasion in any such motion shall be on the designating party. Frivolous
23 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
24 expenses and burdens on other parties) may expose the challenging party to sanctions. All
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1 parties shall continue to maintain the material in question as confidential until the Court
2 rules on the challenge.

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4 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION**

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6 If a party is served with a subpoena or a court order issued in other litigation that
7 compels disclosure of any information or items designated in this action as
8 "CONFIDENTIAL" that party must:

9

10 (a) promptly notify the designating party in writing and include a copy of the
11 subpoena or court order;

12

13 (b) promptly notify in writing the party who caused the subpoena or order to
14 issue in the other litigation that some or all of the material covered by the subpoena or
15 order is subject to this agreement (such notification shall include a copy of this agreement);
16 and

17

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by
19 the designating party whose confidential material may be affected.

20 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
23 confidential material to any person or in any circumstance not authorized under this
24 agreement, the receiving party must immediately (a) notify in writing the designating party
25 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
26

1 the protected material, (c) inform the person or persons to whom unauthorized disclosures
2 were made of all the terms of this agreement, and (d) request that such person or persons
3 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
4 Exhibit A.

5

6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of
10 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
11 This provision is not intended to modify whatever procedure may be established in an e-
12 discovery order or agreement that provides for production without prior privilege review.
13 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502 as set forth
14 herein.

16 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

18 Within 60 days after the termination of this action, including all appeals, each
19 receiving party must return all confidential material to the producing party, including all
20 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
21 appropriate methods of destruction.

23 Notwithstanding this provision, counsel are entitled to retain one archival copy of
24 all documents filed with the Court, trial, deposition, and hearing transcripts,
25 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
26 consultant and expert work product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect
2 until a designating party agrees otherwise in writing or a court orders otherwise.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5

6 **HKM EMPLOYMENT ATTORNEYS LLP**

7

8 By: /s/ William J. Kim
9 Patrick L. McGuigan, WSBA #28897
10 William J. Kim, WSBA #46792
11 HKM Employment Attorneys LLP
12 600 Stewart Street, Suite 901
13 Seattle, WA 98101
14 206-838-2504
15 plmcguigan@hkm.com
16 wkim@hkm.com
17 Attorneys for Plaintiff

18

19 **SCHWABE WILLIAMSON & WYATT**

20

21 By: /s/ Stephanie P. Berntsen
22 Stephanie P. Berntsen, WSBA #33072
23 US Bank Centre
24 1420 - 5th Avenue, Suite 3400
25 Seattle, WA 98101
26 206-622-1711
27 sberntsen@schwabe.com
28 Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
3 of any documents in this proceeding shall not, for the purposes of this proceeding or any
4 other proceeding in any other court, constitute a waiver by the producing party of any
5 privilege applicable to those documents, including the attorney-client privilege, attorney
6 work-product protection, or any other privilege or protection recognized by law.

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8 DATED this 14th day of August, 2017.

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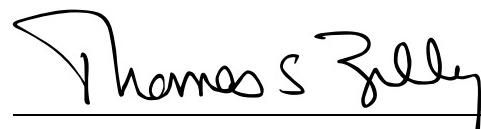
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Thomas S. Zilly
United States District Judge

EXHIBIT A

HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

12 MELISSA A. SPOONER,

Plaintiff,

14 | VS.

15 STEVEN M. KIM, D.D.S., P.S., a Washington
16 professional services corporation, and STEVEN
17 M. KIM and JANE DOE KIM, and the marital
community comprised thereof,

Defendants.

NO. 2:16-cv-01729-TSZ

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ of _____, declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by
the United States District Court for the Western District of Washington on _____,
2017, in the case of *Melissa A. Spooner v. Steven M. Kim, D.D.S., et al.*, No. 2:16-cv-
01729-TSZ. I agree to comply with and to be bound by all the terms of this Stipulated

1 Protective Order and I understand and acknowledge that failure to so comply could expose
2 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
3 not disclose in any manner any information or item that is subject to this Stipulated
4 Protective Order to any person or entity except in strict compliance with the provisions of
5 this Order.

7 I further agree to submit to the jurisdiction of the United States District Court for
8 the Western District of Washington for the purpose of enforcing the terms of this
9 Stipulated Protective Order, even if such enforcement proceedings occur after termination
10 of this action.

12 Date: _____, 20___.

13 City and State where sworn and signed: _____

15 Printed Name: _____

18 Signature: _____